IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5186 of 1996
with
SPECIAL CIVIL APPLICATION No 6126 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DEPUTY EXECUTIVE ENGINEER

Versus

ATULKUMAR J RAVAL

Appearance:

Spl.C.A.5186/96:
MS NAYANA V PANCHAL for Petitioner
MR RV SAMPAT for Respondent No. 1

Spl.C.A.6126/96:
MR RV SAMPAT for Petitioner
MS NAYANA V PANCHAL for Respondents.

CORAM : MR.JUSTICE J.N.BHATT
Date of decision: 13/12/96

ORAL JUDGEMENT

Since both these petitions arise out of common judgment and award and raise common questions, they are being disposed of by this common judgment.

Special Civil Application No.5186 of 1996 is filed by the Deputy Executive Engineer, Panchayat, Junagadh, who is the employer and the respondent is the workman. They are hereinafter referred to as the employer and workman for the sake of convenience and brevity. Second Special Civil Application No.6126 of 1996 is filed by the workman claiming interest on the amount awarded by way of backwages and seeking direction for forthwith reinstatement. In the employer's petition, the challenge is against the impugned order of reinstatement and full backwages granted to the workman by the Labour Court adjudicating the industrial dispute between the parties which had been referred for adjudication under section 10(1) of the Industrial Disputes Act, 1947 (ID Act).

The workman contended before the Labour Court that he was working as work-charge labour with the employersince 23.11.81 on daily wage of Rs.15/- as a helper and that though he was appointed as a helper, he was directed to work as a clerk and paid wages of a labourer. The workman came to be terminated, according to him, on 30.6.83 and on 1.8.88, he issued demand notice which was not replied. The workman was also not taken back in the service. He had also contended that a new recruitment had taken place and his juniors continued at the time when he was terminated. Therefore, he had moved the competent authority for reference and the reference was made to the Labour Court on the issue whether the workman was entitled to be reinstated with full backwages or not.

The employer contested the claim of the workman by filing written statement Ex.9 in the Labour Court wherein, he, inter alia, contended that the workman had remained absent and he had abandoned the work and that there was no question of illegal or unauthorised termination.

Upon appreciation of the facts and circumstances and the evidence, the Labour Court allowed the reference and directed the employer to reinstate the workmen to his original post with full backwages by passing an award on 20.11.95. Therefore, the first petition is filed by the employer challenging the order of reinstatement and backwages. The second petition is filed by the workman seeking further direction for time limit and interest on the backwages.

Learned advocate Ms Panchal while appearing on behalf of the employer, firstly, contended that the reference was made and award is passed against the Executive Engineer, Panchayat, Junagadh and he was not the employer. Therefore, the award is required to be quashed. This submission cannot be accepted in this petition as it is a bolt from blue. No such specific and clear averment or contention was ever raised in the written reply before the Labour Court or no review was sought on that ground. This contention is not a pure question of law. It requires investigation of facts. Therefore, such a contention cannot be allowed to be adjudicated for the first time in a petition. On this ground, the said contention is rejected.

Secondly, the aforesaid contention that the Executive Engineer, Panchayat, Junagadh was not the employer is factually also not sustainable. It is very clear from the evidence that the petitioner was engaged by the Executive Engineer. There is no dispute about the fact that he is the head of the Department. He was, therefore, the employer.

Section 2(g) of ID Act defines the expression 'employer'. Section 2(g) reads as under:

> "(g) 'employer' means --
> (i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
>
> (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

It could very well be visualised from the aforesaid definition that in relation to an industry carried on by the Central Government or the State Government in absence of any prescribed authority, the head of the department is the employer. The Executive Engineer, Panchayat was the employer and it was he who had given the appointment to the petitioner. It is unequivocally borne out from the record that the workman was inducted into service by the Executive Engineer, Panchayat, Junagadh. Therefore, factually and legally, the first contention is not sustainable. Accordingly, it is rejected.

Next, it was contended on behalf of the employer that the

Labour Court had not given an opportunity of hearing to the employer. This submission is probably raised for being rejected. The employer, Executive Engineer, Panchayat, Junagadh had appeared and filed written statement in response to the demand notice. The advocate of the employer had also offered his arguments. His submissions were heard and considered by the Labour Court. It is true that the employer has not examined any witness and has not led the evidence. It cannot, therefore, be said that the required sufficient opportunity of hearing was not afforded to the employer. On the contrary, the facts and circumstances emerging from the record go to show that opportunity was not availed of by the employer. In the light of the facts and circumstances, the second contention is also found meritless and, therefore, it is rejected.

It was also submitted on behalf of the employer that the workman had not completed 240 days of service and therefore there was no question of violation of the provisions of section 25-F of the Industrial Disputes Act, 1947. This submission is also found without any substance in the light of the record of the present case. Such a contention was not raised in the written statement filed before the Labour Court. On the contrary, there is clear and unambiguous evidence of the petitioner workman that he was working as a labourer-cum-helper with the respondent since 23.11.81 and that he was paid daily wage of Rs.15 and that his services came to be terminated on 30.6.83. It is an admitted fact that no procedure was followed as contemplated by the provisions of section 25-F of the ID Act. The employer has not led any evidence to countenance the evidence of the petitioner. There is no reason to discard the unshaken testimony and evidence as led by the workman. The employer has not led led any evidence. In view of the clear and cogent evidence, the finding recorded by the Labour Court that there was violation of provisions section 25-F cannot be said to be unjust or illegal. Section 25-F prescribes the procedure for lawful retrenchment of the workman. No workman employed in any industrial establishment who has been in continuous service for not less than one year under an employer shall be retrenched by the employer unless the conditions specified in clause (a), (b) and (c) of section 25-F are satisfied. It is an admitted fact that the employer had not complied with the mandatory statutory provisions of section 25-F. Such an action would obviously entitle the workman in continuation in service with backwages for the appropriate period in the circumstances of the case. The submission, therefore, that there was no violation of the

provisions of section 25-F is also without any substance.

Lastly, it was submitted that on behalf of the employer that the order of reinstatement with full backwages is not legal and valid. In that, it has been submitted that the workman did not pursue the remedy available to him under the labour law for a period of more than five years. He was discontinued or retrenched on 30.6.83 and he initiated the legal battle on 10th August, 1988. Therefore, it was contended that the petitioner remained indolent and indifferent and therefore he is not entitled to any relief under section 11-A of the ID Act. It is true that the workman remained silent for a spell of five years before he initiated legal action under the provisions of Industrial Disputes Act in the Labour Court. This aspect itself would not destroy the statutory right under the ID Act. Learned advocate for the workman has also fairly submitted that in view of the delay of more than 5 years in taking the required action under the labour law, the workman may be awarded 60 per cent of the backwages instead of 100 per cent. This is really a free, frank and candid submission raised on behalf of the workman. Mere delay in raising the industrial dispute is not fatal for claiming wages and such other reliefs under the labour laws. The employer cannot be allowed to contend that reinstatement cannot be ordered because there is no post or vacancy at the time when the reference came to be allowed. This aspect also will not constitute a sufficient or efficient ground for setting aside the order of reinstatement. It cannot be said to be a legally permissible ground for quashing the order of reinstatement. No doubt, there is a long delay of five years on the part of the workman in putting the legal machinery in motion for relief. This aspect of delay on the part of the workman is not examined by the Labour Court which has partly resulted into miscarriage of justice. It is, in this context, this court while exercising its powers can put the impugned order in the proper and legal shape.

In the light of the aforesaid facts and circumstances emerging from the record of the present case, it would be just and equitable to award 40 per cent of the backwages instead of 100 per cent awarded by the Labour Court in the impugned award while maintaining the order of reinstatement to the post on which the petitioner was working at the time of discontinuation or retrenchment in June 1983. Therefore, the first petition by the employer i.e. Special Civil Application No.5186 of 1996 is required to be partly allowed. The award of

reinstatement with full backwages is modified to reinstatement with 40 per cent backwages. Consequently, the employer is directed to reinstate the workmen to his original post which was on daily wage basis with 40 per cent backwages.

In the second petition being Special Civil Application No.6126 of 1996 at the instance of the successful workmen it has been submitted that specific time limit should be prescribed directing the employer to reinstate the workman and that full backwages from the date of filing of petition and interim order may be awarded. In so far as the first part of the submission is concerned, the employer, Executive Engineer, Panchayat, Junagadh who is the respondent in the said petition, is directed to reinstate the workman within a period of one month. In case if the workmen is not reinstated within a period of one month from today, the workman will be entitled to interest at the rate of 15 per cent on backwages till the period of reinstatement.

In the result, the first petition, Special Civil Application No.5186 of 1996 is partly allowed. The petitioner who is the original opponent, is directed to reinstate the workman to his original post with 40 per cent backwages within 30 days from today failing which the workman will be entitled to interest at the rate of 15 per cent on backwages till the date of reinstatement. The second petition, Special Civil Application No.6126 of 1996 is also partly allowed accordingly. In the circumstances, there shall be no order as to costs. Rule is made absolute to the aforesaid extent in both the petitions.

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